

103.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-A-907-MA-2016 (O&M)

Date of decision:01.12.2018.

PRABHSIMRAN SINGH

... Applicant

versus

GURVINDER SINGH

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Anil Kumar Garg, Advocate,
for the applicant.

HARI PAL VERMA, J.(Oral)

CRM-14357-2016

Prayer in this application filed under Section 5 of Limitation Act read with Section 482 Cr.P.C. is for condonation of delay of 28 days in filing the present application seeking leave to appeal.

For the reasons stated in the application, same is allowed and the delay of 28 days in filing the application seeking leave to appeal is condoned.

CRM-A-907-MA-2016

The applicant-complainant has filed the present application seeking leave to appeal against the order dated 02.02.2016 passed by learned Judicial Magistrate Ist Class, Patiala, whereby on account of non-appearance of the complainant and his counsel, the complaint filed by him under Section 138 of Negotiable Instruments Act, was dismissed in default.

Learned counsel for the applicant has argued that after filing of

the complaint, he did not receive any communication from his lawyer as

well as from the court and it is for this reason, he could not appear before the trial Court. At the time when the complaint was filed, he was residing in Ragho Majra, Patiala and thereafter, he shifted to Ludhiana.

Heard.

Considering the fact that the complaint was filed by the complainant under Section 138 of the Negotiable Instruments Act and for his non-appearance, he could not get the benefit in any manner, this Court finds that in the interest of justice, the order dated 02.02.2016 is liable to be set aside.

Accordingly, present application is allowed, the order dated 02.02.2016 is set aside, the complaint is ordered to be restored back and the trial Court shall proceed with the complaint in accordance with law, however, that would be subject to payment of costs of Rs.2,500/- to be deposited with the Poor Patients' Welfare Fund of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh.

It is made clear that restoration would be subject to payment of costs, which shall be a condition precedent for the trial Court to proceed in the matter.

The applicant shall appear before the trial Court on 20.12.2018.

The present application is being decided without issuing notice to the respondent-accused as even in the complaint before the learned Magistrate, the respondent had not put any appearance, thus, it would further delay the proceedings.

(HARI PAL VERMA)
JUDGE

01.12.2018

sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.